



City of NORFOLK

C: Dir., General Services

To the Honorable Council
City of Norfolk, Virginia

February 10, 2015

From: Wynter C. Benda, Deputy City Manager

Subject: Ordinance approving a lease with d'Art Center, for a portion of the Selden Arcade

Reviewed:

Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 2/6

Approved:

Marcus D. Jones, City Manager

Item Number:

PH-1

- I. **Recommendation:** Adopt Ordinance
- II. **Applicant:** d'Art Center
- III. **Description**
This agenda item is to adopt an ordinance to approve a lease agreement between the City and d'Art Center for a portion of the Selden Arcade, at 208 East Main Street, for continued operation as a center for artists and artisans and to provide art education.
- IV. **Analysis**
This lease agreement allows d'Art to continue operation of center inside Selden Arcade. The new lease agreement shall be for one (1) year commencing April 1, 2015 through March 31, 2016 and renewable for four additional consecutive one-year terms.
- V. **Financial Impact**
D'Art Center will pay rent of \$3.00 per square foot, per year, for a total annual rent of \$39,447.00.
- VI. **Environmental**
There are no known environmental issues related to the Lease Agreement.
- VII. **Community Outreach/Notification**
Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement

Form and Correctness Approved

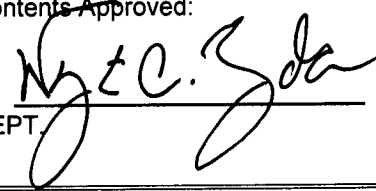
By 
Office of the City Attorney



NORFOLK, VIRGINIA

Contents Approved:

By
DEPT



ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH D'ART CENTER, FOR A PORTION OF THE SELDEN ARCADE, A PROPERTY IN THE CITY OF NORFOLK.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Lease Agreement between the City of Norfolk, as lessor, and D'ART Center as lessee, a copy of which is attached hereto as Exhibit A, by which the City of Norfolk leases to D'ART Center a portion of that certain property known as The Selden Arcade, in the City of Norfolk, Virginia, upon conditions specifically set forth therein, are hereby approved.

Section 2:- That the City Manager is authorized to execute said lease for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Lease Agreement

THIS LEASE AGREEMENT ("Lease") made this _____ day of _____, 2015, by and between **THE CITY OF NORFOLK** ("Lessor"), a municipal corporation of the Commonwealth of Virginia, and **D'ART CENTER** ("Lessee" or "D'ART Center"), a Virginia non-stock corporation.

WITNESSETH THAT:

1. **PREMISES.** Lessor, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Lessee, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, a portion of the property known as the Selden Arcade, at 208 East Main Street, in Norfolk, Virginia, hereinafter referred to as "Premises." Premises consist of thirteen thousand one hundred forty-nine (13,149) square feet, shown on Exhibit A hereto attached and incorporated by reference, as "D'ART SPACE").

2. **USE.**

(a) Lessee covenants and agrees to use and occupy Premises as a center for artists, artisans and craftsmen to pursue their artwork, to sell same to the public, to provide art education and for all related purposes ("Permitted Use").

(b) The area shown on Exhibit A as the "ARCADE CORRIDOR" is rentable space under the control of Lessor, through its Manager of Cultural Affairs ("Facility Manager") and Manager of Special Events ("Events Manager"). Lessee understands that Lessor may rent the Arcade Corridor to another entity and that the renting entity will be setting up and/or hosting its event during Lessee's regular business hours; Lessor will make every effort to allow clear access through the Selden Arcade and to the Premises.

(c) In order to enhance The Selden Arcade's appeal to the general public and visitors to the City, and for the purpose of providing additional exposure to Lessee's artists, Lessee, as a primary tenant, will be allowed certain uses of the Arcade Corridor, of other spaces and of the Premises, as detailed in Exhibit B, hereto attached and incorporated by reference.

3. **LEASE TERM.** This lease agreement is for a one-year term ("Initial Term") beginning April 1, 2015 and ending March 31, 2016, subject to the termination provisions of this Lease. Provided Lessee is not then in default, this Lease may be renewed for four additional consecutive one-year terms upon mutual agreement of Lessor and Lessee. Should one of the parties to the Lease decide not to renew the Lease, it will give written notice to the other party one hundred twenty (120) days prior to the expiration of the then current term.

4. **RENT.** For the Initial term and any additional renewal term under this Lease, Lessee agrees to pay Lessor as rent for the Premises three dollars (\$3.00) per square foot, per year, for an total annual rent of Thirty-Nine Thousand Four Hundred Forty-Seven Dollars (**\$39,447.00**). The rent shall be paid in monthly installments of Three Thousand Two Hundred Eighty-Seven

Dollars and Twenty-Five Cents (**\$3,287.25**), made promptly on the first day of each month during the term of this Lease without demand and without offset or deduction.

No payment by Lessee or receipt by Lessor of a lesser amount than the monthly installment stipulated in this Lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

5. **PAST DUE RENT AND LATE CHARGES.** Lessee hereby acknowledges that late payment by Lessee to Lessor of rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to processing and accounting charges. In such event that Lessee shall fail to pay, when the same is due and payable, any rent, charges or adjustments, and if said sums have not been paid within fifteen (15) days of their due date, then Lessee shall pay to Lessor a "Late Charge" of One Hundred Dollars (\$100.00) or two percent (2%) of the amount due on all rents, whichever is greater. Lessee further covenants and agrees to pay Lessor as a "bad check" or returned check charge the amount of Fifty Dollars (\$50.00) per bad check.

6. **NO JOINT VENTURE.** It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

7. **UTILITIES.** Lessor shall promptly pay all charges when due for water and sewerage, gas and electricity and utility taxes in connection with the use of the Premises. Other utility charges or fees shall be Lessee's exclusive responsibility .

8. **NO ASSIGNMENT OR SUBLEASE.** Lessee covenants not to assign, mortgage or encumber this Lease nor sublet or suffer or permit the Premises or any portion thereof to be used by others without the prior written consent of the Lessor in each instance, except that Lessee may sublet space to artists of the D'Art Center after notice to the Lessor and a fifteen (15) day wait period for Lessor to exercise its right to object; failure of Lessor to object within the fifteen (15) day period will be deemed consent to the sublease.. This provision does not apply to the renewal of existing subleases. The transfer of fifty percent (50%) or more of Lessee's stock, if Lessee is a corporation, or the transfer of twenty-five percent (25%) or more partnership interest in Lessee, if Lessee is a partnership, or the dissolution of Lessee as a corporation or partnership, is regarded as an assignment of the Lease, and the same is not permitted without the prior written consent of the Lessor.

In determining whether to grant consent to the Lessee's sublet or assignment request, the Lessor may consider any reasonable factor. Lessor and Lessee agree that any of the following factors may be considered in deciding the Lessee's request:

(a) The financial strength of the proposed assignee/sublessee, which must be at least equal to that of the existing Lessee;

(b) Use of the Premises by the proposed assignee/sublessee, which must be identical to the use permitted by this Lease, as set forth herein.

(c) Business reputation of the proposed assignee/sublessee, which must be in accordance with generally acceptable business standards;

(d) Managerial and operational skills of the proposed assignee/sublessee, which must be equal to or greater than those of the existing Lessee;

(e) Use of the Premises such that it will not violate any other agreements or covenants affecting the Premises; and

(f) Use of the Premises by the proposed assignee/sublessee such that it will not violate or create any potential violation of any laws.

If this Lease is assigned without the prior written consent of the Lessor, the Lessor is permitted to collect rent from the assignee and apply the net amount collected to all rent herein due and reserved, but the application of same rent shall not be regarded as implied or written consent to any assignment or sublease. Collection of rent shall not be deemed a waiver of the covenants contained in this paragraph. The acceptance of the assignee as Lessee does not constitute a release of the performance of the covenants required to be performed by Lessee. In such event that the Lessee assigns its leasehold interest or sublet the Leased Premise for rents in excess of those rents reserved herein, Lessee shall pay all such excess rent to Lessor as Additional Rent. Lessee shall also reimburse Lessor for any attorney or other professional fees, which might be incurred or connected with such transfer or assignment.

9. **CONTINUOUS OPERATION.** As a material inducement to the Lessor to enter into this Lease, Lessee agrees to keep the Premises open for business. Lessee shall continuously use the Premises for the purpose specified in section 2 of this Lease, during the Term of this Lease, carrying on therein Lessee's business undertaking diligently. Lessee shall keep the Premises open and available for business during such days and hours (except holidays observed by the City of Norfolk) as the parties agree in writing, except when prevented by strikes, fire, casualty or other causes beyond Lessee's control. Hours of operation shall be based on surrounding business hours and accommodation of the public. Lessee represents that its operation will include the display of art pieces and the interactive involvement of its sublessees in art projects.

10. **LESSEE INDEMNIFICATION AND LESSEE INSURANCE.** Lessee agrees that it will hold harmless Lessor from any and all injury or damage to person or property in, on or about the Premises, including, without limitation, all costs, expense, claims or law suits arising in connection therewith, except for injury or damage arising from Lessor's negligence or willful misconduct. Lessee covenants that it will, at all times during the Term of this Lease and at its own cost and expense, carry public liability insurance on the Premises, with limits of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate and \$100,000.00 fire legal liability.

Lessee further covenants that it will, at all times during the Lease Term and at its own cost and expense, carry insurance against damage by fire or other perils in an amount equal to the replacement value thereof on Lessee's inventory, furniture, fixtures and equipment and all parts of the Premises for which the Lessee is responsible as defined in paragraph 18. The same shall also include plate glass insurance, providing full coverage for replacement of the destroyed or damaged plate glass in or on the Premises. Each insurance policy shall be so written as to protect the Lessor and the Lessee, as their respective interests may appear, and the originals of each and all such policies of insurance, or duplicates thereof issued by the insurance company, also known as Insurance Certificates, shall be delivered to the Lessor. The Insurance Certificate shall also acknowledge the hold harmless and waiver of subrogation, as described in paragraph 20 herein. If Lessee fails to provide such insurance, Lessor may terminate this Lease with thirty (30) days prior written notice to Lessee and opportunity to cure by Lessee within the thirty (30) days notice period.

11. **ACCEPTANCE OF PREMISES.** Lessee hereby agrees to accept the Premises from the Lessor as they are found by Lessee.

12. **ESTOPPEL CERTIFICATE.** Lessee shall, from time to time and within ten (10) business days after request therefore by the Lessor, execute, acknowledge and deliver to the Lessor a written Estoppel Certificate in recordable form provided by Lessor and reasonably agreed to by Lessee. The Estoppel Certificate shall certify to the Lessor, its Mortgagee or other party designated by the Lessor, as of the date of such Estoppel Certificate that (a) the Lessee is in possession of Premises and is currently paying the Rent; (b) the following Lease dates are and have been established: the Commencement Date and Termination Date of same Lease and that date upon which the Lessee started to pay rent; (c) that this Lease is unmodified and in full force and effect, or if there have been modifications, that the same are in full force and effect as modified and setting forth such modifications; (d) that there are no existing set-offs or defenses against the enforcement of any rights or remedies of the Lessor, or any duty or obligation of the Lessee, hereunder, and if so, specify the same in detail; and (e) that the Lessee has no knowledge of any event having occurred that will authorize the termination of this Lease by the Lessee, or that the Lessee has no knowledge of any uncured defaults on the part of the Lessor under this Lease, or if the Lessee has such knowledge, specifying the same in detail. In the event that the Lessee does not execute and deliver such Estoppel Certificate, as required herein, then this Article 12, for purposes of this Lease, shall be and shall constitute an Irrevocable Power of Attorney, appointing and designating the Lessor, its successors and assignees, as the Lessee's attorney-in-fact to execute and deliver such Estoppel Certificate as herein provided.

13. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT.** Lessee agrees that this Lease is subordinate to any mortgage or lien resulting from financing or refinancing, now or hereafter placed upon the land on which the Premises have been built or upon any building hereafter placed upon the land, of which the Premises are a part. Lessee will further attorn to and acknowledge the foreclosure purchaser or purchasers as the Lessor hereunder. This shall be self-operative and no further instrument of subordination shall be required by any mortgagee. However, Lessee shall, upon the request of any party in interest, promptly execute such instrument or certificate to carry out the intent thereof.

14. **QUIET ENJOYMENT.** Lessor hereby covenants that Lessee, upon fully complying with and promptly performing all the terms, covenants and conditions of this Lease, on its part to be performed, and further, upon the prompt and timely payment of all rental sums due hereinunder, shall have and quietly enjoy the Premises for the Lease Term set forth herein.

15. **LESSOR MAINTENANCE.** Lessor covenants that it will, at its own cost and expense and with reasonable dispatch after being notified in writing by Lessee of the need therefore, make such repairs to the common areas as depicted in Exhibit A ("Common Areas"), outside utility lines and exterior of the Premises, including the foundation, roof, gutters, down spouts and outside walls, but excepting all storefronts, glass, doors (but not the front glass doors in the Common Areas), awnings and canopies, if applicable and as may be necessary, to keep the same in a good, workmanlike condition of repair.

16. **ROOF.** Lessee agrees that it will not cut the roof, drive nails into or place any debris on the roof of the building of which the Premises constitute a part. Any roof alterations or repairs necessitated by Lessee's requirements (i.e. stove vents, antennae, etc.) shall be done at Lessee's expense and authorized only by Lessor's written permission and under Lessor supervision, or performed by or supervised by a roofing contractor approved by Lessor in writing. Lessee shall also pay to Lessor on demand the cost incurred by Lessor of roof repair or roof re-seal, when Lessee is a prime cause for the need to repair or re-seal, as for example, the removal of a hood vent and the necessary reseal.

17. **LESSEE MAINTENANCE.** Lessee covenants that it will, during the Term hereof, and at its own cost and expense, maintain and upkeep the interior of the Premises, including, without limitation, toilets, pipes, plumbing, wires and conduits, electric lines, electric panel box, any outdoor lighting on Lessee's circuit such as rear door lights and signage, doors, awnings, canopies and store fixtures in good condition and repair, making such replacements as may be necessary from time to time. Lessee understands and agrees that it is also responsible for any condensation in and/or around the heating, ventilating and air conditioning (HVAC) system and its ductwork, except if such repair is caused by Lessor's damage to the HVAC. To the extent that the central HVAC unit services the Premises, it shall be Lessor's responsibility to maintain it at its own cost; should Lessee install its own HVAC system, the maintenance and upkeep of that system shall be Lessee's responsibility.

18. **ADDITIONAL LESSEE COVENANTS.**

(a) Lessee shall not make alterations, additions or improvements to the building structure of which the Premises are a part without first obtaining Lessor's written approval and consent. For purposes of this Lease, the structural components of the building are hereby defined as the foundation, structural steel, roof, exterior walls, storefront components including storefront glass and doors, back doors, or loading doors, existing interior plumbing improvements, exterior plumbing lines, HVAC unit components and ductwork, electric service, ceiling and light fixtures and Common Areas. Lessee shall present to Lessor plans and specifications for any such work at the time approval is sought from Lessor for Lessee structural modifications.

(b) Lessee has the right to install its store trade fixtures in the Premises, provided that such installation does not damage the construction of the building nor interfere with the structural components of the building of which the Premises are a part. Such installations shall be at the sole risk and at the expense of Lessee. All fixtures installed by Lessee shall remain the property of Lessee, and if Lessee is not in default of the Lease, its terms and covenants herein, the same fixtures shall be removed by Lessee at the expense of Lessee at the end of the Lease Term. Lessee further agrees to repair and/or to reimburse Lessor for the cost of repair for any damages to the Premises caused by the installation and removal of its trade fixtures. In the event that fixtures are left behind or abandoned, Lessee shall pay to Lessor any expenses associated with repairs to the Premises caused by the removal of same fixtures.

(c) Design of storefront signage and fabrication and installation of the same shall be approved by the Lessor or its Agent in writing prior to sign installation by Lessee at Lessee's expense. Lessee further agrees to maintain such storefront signage, awning signs, canopy signs, show window lettering, door signs or additional similar advertising signs in a good condition of repair and attractive display at all times. Lessee's signage is subject to and shall be within the sign criteria established by the Department of Planning of the City of Norfolk.

Signs installed by Lessee are the property of Lessee, and if Lessee is not in default hereunder, shall also be removed by Lessee at the end of the Lease Term at Lessee's expense. Signs that are left behind or abandoned become the property of the Lessor. If Lessee abandons sign upon termination or sooner of this Lease, Lessor shall have the right to remove the sign and Lessee agrees to be responsible and liable for the cost of such removal and the cost of such repairs occasioned by same removal.

(d) Lessee will not use nor permit the Premises to be used for any illegal or immoral purpose. Lessee hereby agrees to comply with all Federal, State and Municipal laws, ordinances and regulations as they relate to Lessee's business and/or to the Premises in which the Lessee's business is located, and the use, storage and disposal of hazardous substances.

(e) Lessee agrees to contain within its Premises any and all noise, music, or odors and/or aromas, to the extent that no nuisance will be created to its neighbor Lessees, and all other Premises and Common Areas within the Selden Arcade shall be free from noise or aromas which originate from Lessee's Premises.

(f) Lessee shall store all trash, rubbish and garbage in fully closed containers at the rear of the Premises and Lessee shall pay all costs incidental to the removal thereof. Lessee shall not burn or otherwise dispose of any trash, waste, rubbish or garbage in and or about the Premises. Any expenses incurred by Lessor related to the removal of the same shall be reimbursed by Lessee.

(g) Lessee covenants that it will, at its own expense, take such steps as shall be necessary to keep the Leased Premised free of termites, rodents, insects and other pests and that it will save Lessor harmless from any damage caused thereby.

(h) Lessee shall not make any use of the Premises, which would make voidable or void any policy of fire or extended coverage insurance covering any of the Selden Arcade or cause

the building to become uninsurable. Lessee covenants that, without prior written consent of the Lessor, Lessee will not do anything, which will increase the rate of fire insurance premium on the building. If by reason of any use by Lessee of the Premises or the keeping by Lessee of any flammable substances in the Premises, the hazardous insurance premiums or policies maintained by Lessor shall be increased over normal rates for retail stores in the Selden Arcade, the amount of the increase in the Lessor insurance premium shall be paid to Lessor by Lessee from time to time on demand. Lessee hereby covenants that it shall cease and desist any activity so affecting the insurability of the Premises upon written demand of the Lessor.

(i) Except as provided in Exhibit B, Lessee will not use nor permit to be used any advertising medium or device such as audio broadcast, loudspeaker, radio, public address system, remote radio station, or flashing or digital reader sign, without the prior written consent of the Lessor.

(j) Lessee shall not hold any fire, bankruptcy, and going-out of business or auction sales, without the prior written consent of the Lessor.

(k) Lessee shall not use the sidewalks or any other portions of the Common Areas for any purpose related to the selling of merchandise or services without the Lessor's consent in writing.

(l) Lessee shall notify Lessor in writing of all accidents or security-related incidents, i.e. crimes against person(s) and property, which occur in or on the Premises.

(m) No radio or television aerial or satellite dish or disk shall be erected on the roof or exterior walls of the Premises or on the grounds or on the Selden Arcade common areas without the written consent of the Lessor in each instance. Any aerial so installed without such written consent shall be subject to removal by Lessor or its Agent without notice at any time, and Lessee shall pay Lessor, on demand, the cost of such removal.

19. **LESSOR INSPECTION AND ACCESS.** Lessor or its Agent, employees and/or contractors shall have the right to enter the Premises at any reasonable time after notice to tenant to examine the same, at a mutually agreeable time; to show the Premises to prospective purchasers, lenders, or prospective Lessees of the Premises; and to make such repairs, alterations, improvements or additions as Lessor may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary, Lessor or its Agent may, in the case of emergency, or if the Premises are unsecured and temporarily unoccupied, forcibly enter or secure the same, or take such other steps to address the emergency that Lessor deems appropriate, without rendering Lessor liable therefore. Otherwise, all such work and installation shall be done, so far as practical, so as not to unreasonably interfere with Lessee's use of the Premises. Lessee also hereby grants unto Lessor the right, within four (4) months prior to the termination of said Lease Term, to post and to remain thereon, without hindrance or destruction, the usual notice of "For Rent" on the storefront glass or front walls of said Premises. The exercise of any of these reserved rights by Lessor shall not be deemed as an eviction or disturbance of Lessee's use, possession and quiet enjoyment of the Premises, and shall never render Lessor liable in any manner to Lessee or any other person.

20. **WAIVER OF SUBROGATION.** Lessor and Lessee waive all right of recovery against each other for any loss in or about the Premises, from perils insured against and under the fire insurance contract, including any all risk endorsements thereof, whether due to negligence or any other cause. This release of liability shall be operative only as long as waiver of subrogation clauses are available on insurance policies, in the amounts, form, kinds and with a company satisfactory to Lessor mortgagee or to mortgagee, as Lessor, in the event of foreclosure.

21. **INDEMNITY AGAINST LIENS.** Lessee agrees that it will, at all times during the Term of this Lease, take any and all steps necessary to prevent the filing of mechanics liens against the Premises. Lessee further agrees to indemnify and save the Lessor harmless from and against any and all liabilities incurred by Lessee or claimed or charged against the Premises for labor or materials contracted for by Lessee or its sublessees. Lessee shall promptly pay, or otherwise discharge, any and all such claims, expenses and liens, including the mechanic's materialmen's and other laborer's liens asserted or claimed against the Premises or any part thereof. In no event shall Lessor or any of the Lessor's property be liable for or chargeable with any expense or lien for work, labor or materials used for and in the Premises; or for any improvements thereof or changes made upon the order of Lessee, or to discharge the obligations of the Lessee.

22. **FIRE AND/OR DESTRUCTION.** If the Premises shall be damaged by fire or other casualty during the Term hereof, Lessor, at its sole discretion, will make the decision as to whether it will restore the structural components and items. Lessor, at its option, may terminate this Lease as of the date of such destruction by giving Lessee written notice of its intention to do so within thirty (30) days after such date of destruction.

If Lessor decides to restore the Premises, Lessee's rent payment shall re-commence on the date that Lessee reopens for business but no later than the sixtieth (60th) day after Lessor notifies Lessee in writing that the Premises are ready for fixturing. The rent payable hereunder shall be equitably and proportionately abated, according to loss of use to Lessee, during the period of time intervening between the date of such fire and/or destruction and the date that the Premises are restored. However, if the damage is due to the fault or the negligence of the Lessee or its employees, there shall be no abatement of rent. If this Lease is so terminated, then the rent payable hereunder shall be abated as of the date of same destruction and Lessee shall remove all its property from the Premises within thirty (30) days after the receipt of written notice of termination. Unless Lessor gives such notice, this Lease shall remain in full force and effect and Lessor shall repair such damage as its expense, as expeditiously as possible under the circumstances. Notwithstanding the foregoing, in the event of damage to the Premises by fire or casualty which is not the result of Lessee's negligence, and which cannot be repaired within sixty (60) days of occurrence, Lessor or Lessee shall have the right to terminate this Lease by giving the other party thirty (30) days prior written notice.

23. **FORCE MAJEURE.** In the event that either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the

party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such acts shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that the provisions of this Lease Article shall not operate to release Lessee from this Lease nor to excuse Lessee, nor shall Lessee in any event be excused from prompt payment of rent and all other charges due Lessor by Lessee.

24. **EMINENT DOMAIN.** If all the Premises are condemned or taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the date that the Lessee is required to vacate the Premises and all rent shall be paid up to and until same date of termination. If only part of the Premises shall be taken and the size of the Premises is reduced by 20% or more of the square footage of the Premises, or results in the closing of any entrance or exit to the Premises that has a material adverse impact on the Lessee, then Lessee shall have the right to terminate the Lease, or if the part that is taken is less than 20% of the square footage of the premises, then the Lessee will be entitled to an equal and proportionate reduction in rent. Further, Lessor shall, as expeditiously as possible, repair the remaining portion of Premises to the extent necessary to render the same suitable for which the Premises were leased. Lessee hereby waives any right that it may have to any condemnation award or sum paid under threat of condemnation as a result of a complete or partial taking of the Premises and/or any portion of the Common Areas. If there is only a partial taking of the Common Areas, this Lease shall not terminate and this Lease shall remain in full force and in effect. After partial taking of the Common Areas, the Lessor, within a reasonable time thereafter, shall repair or reconstruct the remaining portion of the common Areas to the extent necessary to make the same a complete architectural unit.

25. **LESSEE DEFAULT.** The occurrence of any one of the following events constitutes a default by the Lessee and a breach of this Lease and its covenants by the Lessee, if such default, breach or non performance is continued and not cured within ten (10) days after written notice from Lessor: (a) The vacating or abandonment of the Premises by Lessee, or the failure of the Lessee to be open for business and for the conduct of business as described in the Use Clause Article found in this Lease Agreement, (b) The failure by Lessee to make any payment of rent, on or before the due date thereof, (c) The failure by Lessee to perform any covenants herein or the breach by Lessee of any Lease covenants herein, other than those described in sections (a) and (b) of this Article 25, and the further failure by Lessee to cure such covenant breach or non-performance, or to commence to cure and diligently pursue the cure of the covenant breach or non-performance which cannot be fully remedied within ten (10) days, (d) Petition by Lessee for bankruptcy, insolvency, or general assignment for the benefit of its creditors, or receiver appointment for Lessee for the substantial part of its assets and properties and such receiver is not removed within ten (10) days after its appointment, (e) If the Lessee shall default as described in this Article 25, or in the performance of any covenant contained in this Lease, and if such default is repeated once within the next twelve months then, notwithstanding that such defaults shall have been cured within the period after notice as herein provided, any further similar default within such twelve month period shall be deemed a Lessee Default which cannot be cured, notwithstanding provisions for cure provided in this Lease. Upon such default, the Lessor may proceed, with five days notice but no opportunity for cure, to exercise its remedies upon default.

26. **LESSOR REMEDIES.** In the event of Lessee Default, including Lessee's abandonment or vacating the Premises, Lessor shall have the right, in addition to all other rights and remedies provided by the law, to terminate this Lease, and/or to re-enter and take possession of the Premises, peaceably or by force, and/or to change the locks thereto and to remove any property and merchandise therein, without liability to Lessee for damage arising therefrom and without obligation to Lessee to store any merchandise and property. Any costs of removal and storage of Lessee's fixtures, inventory, equipment or any other personal property shall be the expense of Lessee and shall be added to all sums owed by Lessee to Lessor. Further, Lessor is under no obligation to Lessee, after default or abandonment, to relet the Premises in the name of Lessee or for the benefit of the Lessor, but shall reasonably attempt to relet the Premises. Lessor may, at its option and without subsequent notice to Lessee, re-let the Premises for such term and on such covenants and purposes as Lessor, in its sole discretion, may determine are in the best interest of the Lessor. Lessor may collect and receive all rents derived therefrom and apply the same, after deduction of appropriate expenses, to the payment of the rent overdue and payable hereunder from the Lessee in default. The Lessee in default shall remain liable for any deficiency. Further, Lessor shall not be responsible for or liable for any failure to re-let the Premises or any part hereof, or for any failure to collect any rent connected therewith. The Lessor's recovery of possession of the Premises by any means shall not relieve the Lessee of its obligation to pay Rent through the term of the Lease, including any extensions in effect at the time of default under which Lessee then occupies the Premises, unless the Premises are relet at a rental rate equal to or higher than the then current Rent.

Acceptance by Lessor of delinquent rent from Lessee after Lessee default shall not cure such default or entitle Lessee to possession of the Premises. Lessee hereby expressly waives any and all rights of redemption, if any, granted by and under any present or future law, in the event that Lessee shall be evicted or dispossessed for any cause in default or in the event that the Lessor obtains possession of the Premises by virtue of the remedies outlined in this Lease, or otherwise. The receipt by Lessor or its Agent of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Lessor of any covenant hereof shall be deemed to have been agreed upon, unless explicitly reduced to written agreement and signed by Lessor and Lessee. All remedies of Lessor shall be cumulative.

27. **HOLDOVER AND SUCCESSIVE LESSEE.** If Lessee shall be in possession of the Premises after the established Termination Date of the Lease, and in the absence of any written agreement extending the term hereof, the tenancy of this Lease shall become one from month-to-month, to be terminated by either Lessee or Lessor on thirty (30) days written notice. Lessee shall pay the rent for the thirty (30) days following notice.

Lessee acknowledges that possession of the Premises must be surrendered to Lessor on the Termination Date or sooner. Lessee agrees to indemnify and save Lessor harmless from any and all costs, claims, loss or liability resulting from delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by a succeeding Lessee founded on such delay. The parties hereto recognize and agree that the damage to the Lessor resulting from any failure to timely surrender possession will be extremely substantial, will exceed the Rent payable hereunder, and will be impossible to measure accurately. Lessee therefore agrees that if possession of the Lease Premises is not surrendered to Lessor within twenty-four (24) hours after the

Termination Date or sooner, then the Lessee shall pay to Lessor for each month and for any portion of a month during which the Lessee holds over in the Premises a sum equal to two (2) times the aggregate of Rent which is payable under this Lease during the last month of the term hereof, in addition to the Lessor's actual damage incurred by Lessee's failure to surrender which exceeds such rent. Nothing herein contained shall be deemed to permit Lessee to retain possession of the Premises after the termination of the Lease Term, unless specifically agreed to in writing. The provisions of this Article shall survive the expiration or said sooner termination of Lease Term.

28. **TERMINATION AND SURRENDER.** Upon the expiration or termination of this Lease, Lessee shall surrender the Premises to Lessor in as good as condition as they were found upon the Lessee taking possession of the Premises, except for ordinary wear and tear, reduction of the Premises by condemnation or damage by fire, destruction or other casualties or causes beyond Lessee's control. Lessee shall deliver to Lessor or its Agent all keys to the Premises and remove all its personal property, merchandise and trade fixtures and make such necessary repairs or reimbursement, pursuant to Articles 16, 18(b) and 18(c) found in this Lease. After Lessee vacating or Lessee abandonment, Lessor may elect to retain or dispose of, in any manner, Lessee alterations and improvements or Lessee's personal property that Lessee does not remove from the Premises before or after the Termination Date of the Term. Title to any such Lessee alterations or Lessee's personal property, that Lessor elects to retain or dispose of after the Term, shall vest to and in the Lessor. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention or disposition of any such alterations or personal property. Lessee is further liable to Lessor for Lessor's expenses and costs for removing and disposing of any Lessee alterations or Lessee personal property, which Lessor does not elect to acquire.

29. **LESSEE WAIVERS.** The failure of Lessor to insist, in any one or more instances, to strict performance by Lessee as to any Lease covenants shall, not be construed as a waiver by Lessor or relinquishment, in the future, of such covenants, but the same shall continue and remain in full force and effect. The receipt by Lessor or its Agent of rent with knowledge of a covenant breach hereof shall not be deemed a waiver of the same covenant breach, and no waiver by Lessor of any provision hereof shall be deemed to have been agreed upon unless expressed in writing and signed by the parties hereto.

30. **EXCULPATION.** The term "Lessor" as used in this Lease means only the owner, for the time being or at the time of Lease execution by Lessee, of the building in which the Premises are located or the owner of a Lease of both said building and the land thereunder. Lessor shall be liable for the performance of its obligations hereunder only to the extent of Lessor's assets as they pertain to the Premises. Further, the liability of the Lessor shall not extend beyond the period of time of Lessor's ownership of the Premises.

31. **SUCCESSORS AND ASSIGNS.** All the terms, covenants and agreements of this Lease shall extend to and be binding upon the Lessor and be binding upon the Lessee and its respective heirs, administrators, executors, successors, assignees, sublessees, concessionaires, if any, and their respective assigns; and/or upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

32. **NOTICES.** Any notice herein provided for to be given to Lessor shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to:

LESSOR'S NOTICE ADDRESS:

City of Norfolk
Division of Real Estate
Department of Development
500 East Main Street, Suite 1500
Norfolk, Virginia 23510

With copy to :

City Attorney
900 City Hall
810 Union Street
Norfolk, Virginia 23510

LESSEE'S NOTICE ADDRESS:

D' Art Center
Attn: Jennifer Palestrant, Executive Director
208 East Main Street
Norfolk, Virginia 23510

Any notice herein provided for to be given to Lessee shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid. Either party may, at any time, change its address for the purposes of notice hereof by sending a written notice to the other party stating the change and setting forth the new address.

33. **LEASEHOLD TAXES.** Lessee will be responsible for the payment of all leasehold taxes levied on Premises.

34. **OPTION.** Providing Lessee is not in default at any time during the term of this Lease, Lessee must notify Lessor, in writing, no less than one hundred eighty (180) days prior to the expiration of the original Lease term if it wishes to negotiate a new lease.

35. **EARLY TERMINATION RIGHT.**

Lessor and Lessee shall have the right to terminate the lease at any time with one hundred twenty (120) days prior written notice.

36. **AMERICANS WITH DISABILITIES ACT.** In the event that any federal, state, or local government authority (the "Applicable Authority") with jurisdiction determines that the exterior and interior of the Premises is not in compliance with the Americans with Disabilities Act of 1990 (the "ADA"), Lessor, at its sole cost, agrees to take such remedial action as is required by the Applicable Authority pursuant to the ADA to correct or remedied such noncompliance.

Alternatively, if in Lessor's judgment the remedial or corrective measures proposed by the Applicable Authority do not have to be performed in order for Lessor to be in compliance with the ADA, Lessor may contest, at its sole cost, such matter in lieu of performing the remedial action. However, upon final judgment being entered against Lessor in a court of competent jurisdiction with regard to ADA requirements, Lessor agrees to take such remedial actions, at its sole cost, as ordered by such court.

37. **ENTIRE AGREEMENT.** This Lease contains the entire agreement of the parties hereto. Any and all oral or written agreements, understandings, representations and warranties, promises and statements of the parties hereto or from their respective officers and directors or from their partners, Agents or brokers with respect to the subject matter of this Lease, and any matter not covered and mentioned in this Lease, shall be inferior and be merged in and by this Lease. No such prior oral or written agreement, understanding, representation or warranty, promise or statement shall be effective or binding for any reason or purpose, unless specifically set forth in this original Lease. No provision of this Lease may be amended or added to except by an agreement in writing, signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

38. **SEVERABILITY.** In the event that any provision herein is unlawful, or otherwise unenforceable, it shall be severed and deemed null and void ab initio and shall not impair the validity of the remaining provisions of this Lease.

39. **COMPLIANCE WITH FEDERAL IMMIGRATION LAW.** At all times during which any term of this Agreement is in effect, Lessee does not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

40. **COMPLIANCE WITH STATE LAW – AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.** Contractor hereby represents that it is organized as a nonstock corporation and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

41. **GOVERNING LAW.** This Contract shall be governed and construed by the laws of the Commonwealth of Virginia. Venue shall be in the courts of the City of Norfolk, Virginia.

IN WITNESS WHEREOF, the parties have caused this lease agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

City of Norfolk, Virginia

Marcus D. Jones, City Manager

Attest:

City Clerk

Date

D'ART Center

By: _____

Print Name: _____

Print Title: _____

Approved as to contents:

Director, Department of Development

Approved as to form and correctness:

Deputy City Attorney

EXHIBIT A
Selden Arcade

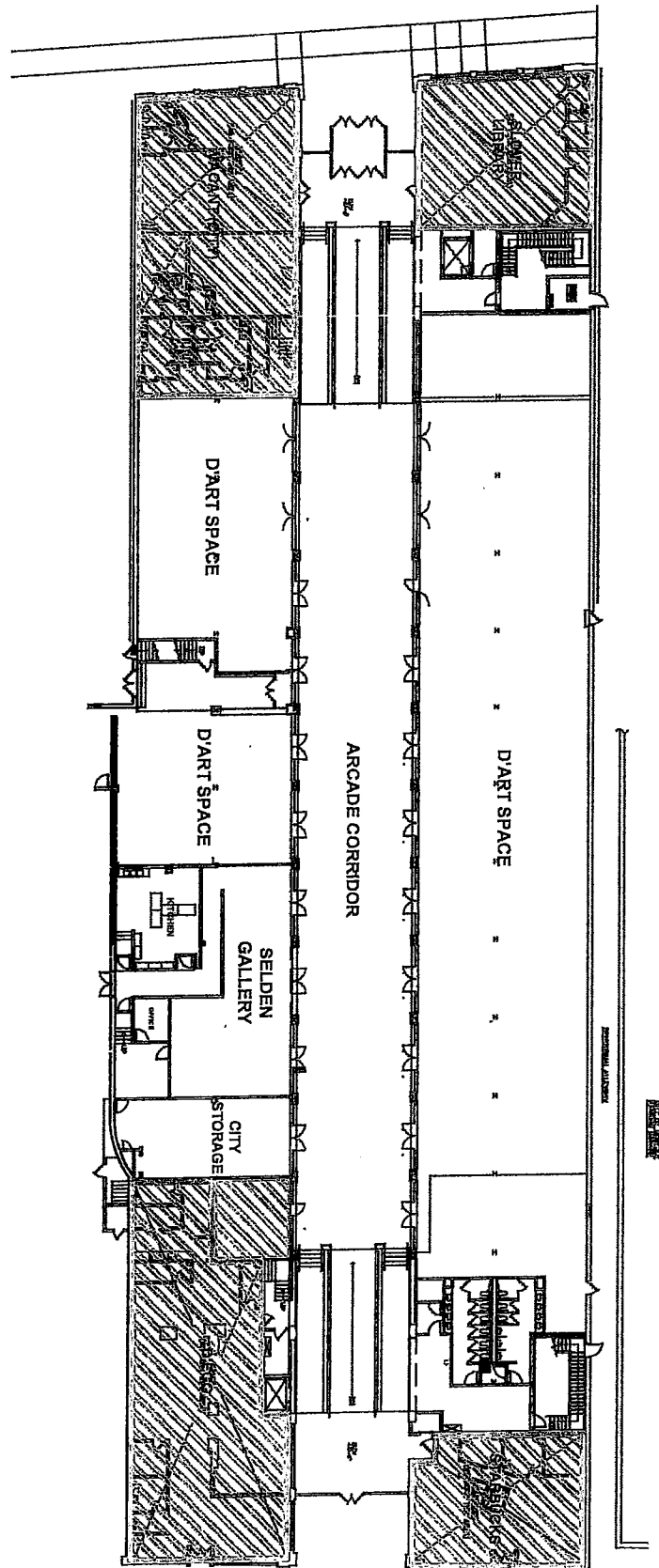


EXHIBIT B

USE OF ARCADE CORRIDOR AND OTHER SPACES BY LESSEE

1. Daily Use of the Arcade Corridor

It is understood that the artists of D'Art Center will regularly display art, hold working and instructional sessions and make use of the Arcade Corridor for artistic purposes during regular business hours. All activities during business hours of the Selden Arcade must be free and open to the public and scheduled with the Cultural Affairs Manager prior to confirming programming. The space and time for these usages will be mutually determined at least two weeks in advance by the Facility Manager and the D'ART Center's executive director and shall not impede traffic throughout the Selden Arcade. The D'ART Center will be solely responsible for the equipment, set-up, tear-down and clean-up of all such displays or activities. City event equipment including, but not limited to tables, chairs, stanchions, etc. that is not normally located in the Arcade Corridor on a daily basis should not be used for Lessee's displays or activities. If such displays or activities necessitate additional clean-up, Lessee shall be charged by the city a minimum of Seventy-Five Dollars (\$75.00).

Additionally, Lessee Center understands that daytime and/or overnight security is not provided and leaving artwork outside of secure spaces overnight is done at the risk of Lessee or its sub lessee.

2. Special Event Use of the Arcade Corridor

(a) Lessee will be entitled to the waiver of rental fees for the use of the Arcade Corridor for up to twenty-four (24) special events a year; additional special events use will be subject to the published rental fees rates. All remaining dates will be made available on a first come, first served basis to Lessee and others. Waiver of rental fees applies only to the Arcade Corridor and does not apply to the Community Room or Selden Gallery; requested use of these areas will be granted on a case by case basis and associated rental fees rates will apply.

(b) In order to ensure that the desired dates are available, all requested special event dates must be submitted **in writing** to the Cultural Affairs Manager. Annual event dates should be submitted for consideration no later than December 1st of the preceding year. New event dates should be submitted **in writing** for consideration and approval prior to commencing planning for the event, and at least two (2) weeks before the date of the scheduled event.

(c) The waiver of rental fees is for Lessee's direct use and benefit and may not be bartered or used by others than Lessee, except with written consent of the City's Director of Cultural Facilities, Arts & Entertainment. Lessee may co-sponsor a special event with another entity; however, it may not sublease the Arcade Corridor to another entity. Any co-sponsored event must support d' Art Center and be promoted as a d' Art Center event. Special events may include art classes and workshops which take place after regular business hours and which require a participation fee.

(d) When using the Arcade Corridor for special events, Lessee must comply with event guidelines applicable to all event users at the Arcade Corridor, as outlined in the Rental Packet, obtainable from the Cultural Affairs Manager.

(e) Combined Events: When the d'ART Center and the City of Norfolk, Cultural Affairs, hold combined art openings, the two organizations will evenly split the costs of security and cleaning for the events. For d'ART ticketed events, d'ART's Mid-Atlantic Art Competition, and d'ARTini which it will share with City Cultural Affairs, d'ART will be responsible for the cleaning expense and City Cultural Affairs will be responsible for the security costs.

3. Use of Other Spaces in the Selden Arcade

Lessee will be entitled to use the Community Room and the Conference Room, respectively once a month each, at no charge, for meetings. Meeting dates must be submitted in advance to the Cultural Affairs Manager, and use will be scheduled based on availability of the rooms. Lessee will be responsible for trash removal and cleaning after each use.

4. Use of Premises for Special Events

(a) Lessee may desire, from time to time, to hold events or rent its part of the Premises to outside groups. As the dates for such events will need to be cleared on the overall booking calendar, Lessee will obtain prior approval from the Cultural Affairs Manager, which approval shall not be unreasonably withheld. Lessee will communicate openly with the Cultural Affairs Manager to avoid scheduling conflicts.

(b) Although these events will take place within Lessee's space, Lessor will charge for security services (hourly charge at current hourly rate) for these events as the Arcade Corridor must remain open so that event attendees can access the Premises. Events with over seventy-five (75+) people in attendance will also incur a \$75 cleaning charge. Events with fewer than 75 in attendance will not incur a cleaning charge. Lessee is responsible for removing all food/beverage trash from the kitchen and the Selden Arcade trash cans when janitorial service is not scheduled.

5. Special Event Catering

(a) In order to provide quality service, the City has pre-screened caterers who may be hired to provide in the Selden Arcade. An exclusive caterers' list is available from the Facility Manager or Cultural Affairs Manager. Three (3) times a year for the first 10 free events and three (3) additional times for the next 14 free events, for special events which are not held exclusively in the Premises, Lessee may use a caterer outside of this list with pre-approval from the Cultural Affairs Manager, provided that the chosen caterer completes the application process and provides a security deposit, proper permits, and holds adequate insurance. When using the Arcade Corridor, Lessee must comply with City event guidelines applicable to all Selden Arcade events. Lessee may use any caterer for events held exclusively in the Premises. Additionally, the 15% banquet fee that is assessed per the City's catering policy will be waived for Lessee's events.

(b) Lessee will be allowed kitchen access for its events, at no cost, and will be issued a key for access to the kitchen via the Selden Gallery. Use of the hot boxes, refrigerator and ice machine is allowed. Lessee is responsible for removing all trash and ensuring the kitchen is left clean and in the condition received following each event. Nothing may be stored in the kitchen between events.

6. Fees for Cleaning and Security

(a) The Cultural Affairs Manager will schedule a duty manager (City staff) to be on-site for Lessee's events in the Arcade Corridor at no charge to Lessee. The City will review each event to determine if a duty manager is required. Lessee will not determine if a City duty manager is required. Special events held exclusively in the Premises will not have a City staff member on-site. (b) Events held in the Arcade Corridor will always require security & housekeeping at Lessee's expense. Even if the event is one of the twenty-four (24) events for which rental fees are waived, Lessee will pay labor costs for security and housekeeping. Rental fees include security and cleaning fees; thus, Lessee shall not incur additional labor costs for security and cleaning for events for which the rental fees have not been waived.

(c) The Cultural Affairs Manager will assign an event coordinator to assist Lessee with coordinating the logistics of its events. The event coordinator will provide an estimate of all labor costs and equipment fees at current rates based on specific event needs. The event coordinator will develop an event estimate which may contain the following fees:

Clean-up Fee (Housekeeping): Arcade Corridor events

The clean-up fee is the charge assessed to clean and restore the Arcade to its daily set-up. The current fees are as follows:

For events where attendance is greater than 200 people:	\$350.00
For events where attendance is between 75-199 people:	\$175.00
For events where attendance is fewer than 75 people:	\$ 75.00

The above quoted fees may change. Lessee will be charged the then current fees for the Arcade Corridor events.

Security Guard: current rate:

\$ 16.28 per hour

Lessee will be charged the then current rate for each event.

Additional Labor:

Events may require additional staffing at Lessee's expense, regardless of whether the rental fees for that event were waived. City event staffing can include, but is not limited to additional security guards, ushers/ticket takers, audio technicians, Police and EMS/Fire-Rescue personnel. The event coordinator will provide an estimate of all labor costs necessitated by the event.